

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application

of

DOME CHEMICALS, INC.

for revision or refund of franchise
taxes under Article 9-A of the Tax
Law for the calendar years 1961
through 1963, inclusive

Dome Chemicals, Inc. having filed an application for revision or refund of franchise taxes under Article 9-A of the Tax Law for calendar years 1961 through 1963, inclusive, and the facts having been agreed to by Stipulation of Facts dated June 8, 1970, executed by Edward H. Best, Counsel and Deputy Tax Commissioner of the State Tax Commission, and by Cahill, Gordon, Sonnett, Reindel & Ohl, representing the taxpayer, and the parties having waived the right to present any further testimony at a formal hearing under Section 214 of the Tax Law,

Upon all the stipulated facts herein and upon the entire record, it is found:

(1) Based on reports filed and an examination by the tax commission's field auditors, notices of assessment were issued as follows:

	<u>1961</u>	<u>1962</u>	<u>1963</u>
Entire net income	\$1,331,815.52	\$912,067.21	\$728,567.00
Business allocation			
per field audit	76.77%	76.9772%	77.1275%
Base	1,022,434.78	702,083.80	561,925.51
Tax at 5½%	56,233.91	38,614.61	30,905.90
Tax paid	54,030.26	35,670.40	28,513.97
Additional tax	2,203.65	2,944.21	2,391.93

(2) In computing the receipts factor of the business allocation percentage, 50% of the receipts representing

shipments to customers from inventories located in Chicago, Illinois was allocated to New York by the field examiner. This is the sole item in dispute.

(3) The notices of assessment were issued on January 16, 1967 and the taxpayer filed a timely application for revision on July 31, 1967.

(4) Dome Chemicals, Inc. was engaged in the manufacture and sale of ethical drugs. Its principal office and manufacturing facilities were in New York. Shipments were made from three locations; New York, N.Y., Chicago, Illinois, and Santa Monica, California.

(5) Chicago inventories were maintained at the warehouse of S. B. Penick and Company, a dealer in drug products. The greater part of two floors of Penick's warehouse was used for storage of inventory of the taxpayer. Bins were set up and labeled for products of Dome Chemicals, Inc. Merchandise was shipped from New York to the warehouse where it was unpacked and stocked in bins.

(6) The agreement between Dome Chemicals, Inc. and S. B. Penick and Company was negotiated by the New York office of Dome Chemicals, Inc. A letter of November 11, 1960 from the New York office, signed by John W. Beal, Jr., executive vice president of "Dome," confirms the agreement and was countersigned by Ralph A. Olson, vice president of "Penick."

(7) Orders placed with Dome by distributors were received at the Chicago warehouse from dealers in the Midwest area. There, a Penick employee specially trained by Dome and assigned exclusively to Dome referred to a credit customer list of approximately 5,000 Dome accounts for a credit rating and accepted or rejected the order based upon the credit standing of the customer, and without referral to Dome's New

York office. From time to time (approximately three times a year), an account became uncollectible and the employee was directed by instructions from the New York office to remove that account from the list of approved customers. In addition, new customers whose names were not on the approved list were referred to the New York office for credit approval. This would occur approximately two or three times per month. Orders were filled by the merchandise taken from the storage bins, packaged and dispatched in the most expeditious manner, and the invoices sent.

(8) Dome Chemicals, Inc. was listed in the Chicago telephone directory with a number exclusive to Dome. Calls to this number were answered "Dome Chemicals" by the Penick employee handling Dome Chemicals distribution operations as indicated at (7) above.

(9) Dome Chemicals had a Midwest general sales promotion operation directed by a sales manager. The sales manager operated from an office which he maintained at his home in Berwyn, Illinois, a Chicago suburb, the expenses of which he deducted for Federal income tax purposes. Under the sales manager's supervision six salesmen (called detail men) visited professional users, dispensers and dealers to encourage the use and purchase of Dome products from their local suppliers who in turn would place an order with either a distributor or Dome at its Chicago warehouse location. The sales manager and the six salesmen were employees of Dome and were hired, paid and directed by Dome's New York City office.

(10) That Section 210.3(a) of Article 9-A of the Tax Law, in effect for the years at issue, provided in part:

"(2) ascertaining the percentage which the receipts of the taxpayer * * * arising during such period from * * *

"(D) sales of its tangible personal property not located at the time of the receipt of or appropriation to the orders at any permanent or continuous place of business maintained by the taxpayer without the state, where the orders are received or accepted within the state and where shipment is made between points outside the state, but only to the extent of fifty per centum of the receipts from the sales referred to in this clause. For purposes of this clause and clause B an order is deemed received or accepted within the state if it has been received or accepted by an employee, agent, agency or independent contractor chiefly situated at, connected with, by contract or otherwise, or sent out from a permanent or continuous place of business of the taxpayer within the state."

(11) That Section 4.16 d of Ruling of the State Tax Commission promulgated March 14, 1962 reads as follows:

"A permanent or continuous place of business maintained by the taxpayer outside New York is any bona fide office (other than a statutory office), factory, warehouse, or other space outside New York, at which the taxpayer is doing business in its own name in a regular and systematic manner, and which is continuously maintained, occupied and used by the taxpayer in carrying on its business through its regular employees regularly in attendance."

Based upon the foregoing findings and all the facts stipulated, the State Tax Commission hereby

DETERMINES:

(A) The part of the S.B. Penick & Company warehouse which is used to store inventory of the taxpayer is not a "permanent or continuous" place of business of Dome Chemicals, Inc. since such premises are occupied by and are under the control of S. B. Penick and Company and employees of S. B. Penick and Company.

(B) Orders are received and accepted at the "Penick" warehouse by S. B. Penick and Company, acting as agent for the taxpayer.

(C) Such orders are deemed received or accepted in New York since they are received by an agent connected by contract with a permanent or continuous place of business of the taxpayer within New York and are properly allocable to New York to the extent of fifty per cent.

(D) That, accordingly, the additional taxes shown at (1) above are affirmed as assessed.


(E) That the aforesaid taxes do not include taxes or other charges which are not legally due.

Dated: Albany, New York

this 9th day of March 1971

STATE TAX COMMISSION


President


Commissioner


Commissioner

DEPARTMENT OF TAXATION AND FINANCE

MEMORANDUM

TO : Mr. Rook
FROM : Mr. Doran
SUBJECT: Dome Chemicals, Inc.

OFFICE: Corporation Tax
DATE : January 26, 1971

Attached is file containing stipulation of facts and (1) proposed determination for 1961, 1962 and 1963, and (2) proposed decision for 1964.

After your review, please send the file to the Tax Commission for consideration.

According to our understanding, you will retain one signed copy of the determination and decision for the files of the Tax Commission and will return one signed copy of each to us. We have retained other copies for distribution purposes in accordance with established procedure.


Director

Enclosures